company contracted to convey to the plaintiff's testator 640 acres out of the land it should hold at a certain time, of the same average probable value per acre as the remaining lands it should then hold, to be selected by the agent of the defendant company. At the time for performance the defendant company owned 6,320 acres. The plaintiff, who has fully performed, appeals from a decree dismissing his suit for specific performance. *Held*, that the decree be reversed. *Williams* v. *Cow Gulch Oil Co.*, 270 Fed. 9 (8th Circ.).

Because of practical considerations, it is generally recognized that a greater degree of certainty is necessary for specific enforcement of a contract than for enforcement at law. See POMEROY, SPECIFIC PERFORMANCE, § 159; FRY, SPECIFIC PERFORMANCE, 6 ed., § 380. On the ground of uncertainty, the weight of authority denies specific performance of a contract to convey a certain amount of land to be selected by the vendor out of a larger tract. *Rampke* v. *Beuhler*, 203 Ill. 384, 67 N. E. 796; *Auer* v. *Mathews*, 129 Wis. 143, 108 N. W. 45. See also *Pearce* v. *Watts*, L. R. 20 Eq. 492. There is, however, respectable authority to the contrary. *Fleishman* v. *Woods*, 135 Cal. 256, 67 Pac. 276. *Cf. Jenkins* v. *Green* (*No. 1*), 27 Beav. 437. The minority view, with which the principal case accords, seems more reasonable. The requirement of certainty, coming largely from history, has been overemphasized. See Roscoe Pound, "Progress of the Law — Equity," 33 HARV. L. REV. 420, 434; 3 WILLISTON, CONTRACTS, § 1424. If the fact of performance can be determined by objective standards, there should be no objection to ordering the defendant to perform, choosing from the alternatives which the contract gives him. *Jones* v. *Parker*, 163 Mass. 564, 40 N. E. 1044. In the principal case, moreover, the plaintiff had already performed. This circumstance makes a court of equity more ready to give relief. *Sanderson* v. *Cockermouth & Worthington Ry. Co.*, 11 Beav. 497, aff'd, 2 H. & T. 327; *South Eastern Ry. Co.* v. *Associated Portland Cement Manufacturers*, [1910] 1 Ch. 12. See also, *Gunton* v. *Carroll*, 101 U. S. 426; *Lowe* v. *Brown*, 22 Ohio St. 463. The court properly does not even mention certain entirely unfounded *dicta* that the requisite of certainty is greater when some one other than the original party to the contract is suing. See *Odell* v. *Morin*, 5 Ore. 96, 98; *Montgomery* v. *Norris*, 1 How. (Miss.) 499, 506.

STATES — LIABILITIES ARISING FROM GOVERNMENTAL INDUSTRIES. — A North Dakota statute provides that the state shall establish a bank, to be financed by sale of state bonds, to be operated by a state Administrative Commission. (1919 LAWS OF N. D., c. 147.) Provision is made for bringing civil actions against the "State, Doing Business as the Bank of North Dakota." (*Ibid.*, § 22.) The plaintiff, a depositor, seeks to garnish credits of the bank. The remedy of garnishment is not by the statute made applicable to the state. From an order refusing to vacate garnishment proceedings, the defendant appeals. *Held*, that the order be affirmed. *Sargent County* v. *State, Doing Business as the Bank of North Dakota*, 182 N. W. 270 (N. D.).

For a discussion of the principles involved, see NOTES, *supra*, p. 335.

TAXATION — INHERITANCE TAXES — TRANSFERS IN CONTEMPLATION OF DEATH. — The plaintiff seeks to recover taxes paid under protest under the provision of the federal inheritance tax statute taxing conveyances in contemplation of death. (39 STAT. AT L. 777; U. S. COMP. ST., § 6336½c.) The trial court refused to charge the jury that "in contemplation of death" refers only to the "apprehension which arises from some existing condition of body or some impending peril" but instructed that the transfer is "in contemplation of death if the expectation or anticipation of death in either the immediate or reasonably distant future is the moving cause of the transfer." *Held*, that there was no error. *Shwab* v. *Doyle*, 269 Fed. 321 (6th Circ.).